IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL REVISION APPLICATION NO. 5 OF 2003.

Deu Keshav Naik, Proprietor
Deekay Real Estates And
Developers, Deekay Plaza,
Umtavaddo, Calangute. ... Applicant.

Versus

1. Seby Martins, Proprietor
   Mocambo Advertising,
   Flat No. 7, Sushila
   Building, 3rd Floor,
   18th June Road, Panaji.
2. State of Goa through
   Public Prosecutor. ... Respondents.

Mr. D.V. Patkar, Advocate for the Applicant.

Mr. J. Godinho, Advocate for the Respondent No. 1.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent No. 2 State.

Coram : P.V. HARDAS, J.

Date : 20th June 2003.

ORAL JUDGMENT.

The applicant/original accused being aggrieved by his conviction for an offence punishable under Section 138 of the Negotiable Instruments Act and sentence of simple imprisonment for three months and fine of 5,000/- in default simple imprisonment for 15 days, passed by the Judicial Magistrate, First Class, Panaji, by Judgment, dated 10th May 2002, in Criminal Case No. 235/OA/98/C and confirmed by the IInd Additional Sessions Judge, Panaji, by Judgment, dated 22nd January 2003, in Criminal Appeal No. 44 of 2002, has filed the present revision assailing the correctness

of the Judgments of the two Courts below.

2. The respondent no. 1/original complainant had filed Criminal Case No. 235/OA/98/C in the Court of the Judicial Magistrate, First Class, Panaji, against the present applicant, for an offence punishable under Section 138 of the Negotiable Instruments Act. It was stated by the complainant that he runs an advertising agency and had released an advertisement on behalf of the accused in the local newspaper. The accused towards discharge of his liability for payment of the said charges of advertisement had issued cheques to the complainant bearing numbers 0731558, dated 20th February 1998, 0731559, dated 5th March 1998, 0731560, dated 15th March 1958 and 0731561, dated 25th March 1998, amounting to Rs. 1,05,799/-, drawn on the Bank of Baroda, Calangute Branch. It was further averred by the complainant that the said cheques were returned unpaid on account of insufficiency of funds. After issuance of notice, since no payment had been made, the complainant filed the case. On consideration of the evidence, the learned Judicial Magistrate, First Class, by his Judgment, as aforestated, convicted and sentenced the accused.

3. The applicant/accused, being aggrieved by his conviction and sentence, filed Criminal Appeal No. 44

of 2002, before the IInd Additional Sessions Judge, Panaji. The learned lower appellate Court, on consideration of the evidence, found that there was no defence which had been raised by the applicant/accused and, further, found that the complainant had established the offence beyond reasonable doubt and, thus, dismissed the appeal. The applicant/accused, being aggrieved by the aforesaid Judgment, has preferred this revision before this Court.

4. Mr. Patkar, the learned counsel appearing on behalf of the applicant, has made the following submissions before me. The learned counsel for the applicant states that the substantive sentence of simple imprisonment for 3 months may be reduced and in lieu of the reduction in the sentence the respondent no. 1/complainant be awarded compensation in terms of Section 357 of the Code of Criminal Procedure.

5. The prosecution was initiated in the year 1998. The trial concluded in the year 2002. Nearly 5 years have passed since the initiation of the prosecution for an offence under Section 138 of the Negotiable Instruments Act. It is urged by the learned counsel for the applicant before me that in view of the recession, the business of the applicant has suffered and the applicant since the year 1998 is going through a

bad patch as the business activities has virtually come to a grinding halt. According to him, constructed flats are not being purchased in view of the recession and the financial stringency.

6. According to me the ends of justice would be met by awarding compensation to the respondent no. 1/complainant equal to the value of the cheques, which is Rs. 1,06,000/- instead of sending the applicant/accused to jail after 5 years of initiation of the prosecution for serving his sentence. Section 357(4) of the Code of Criminal Procedure permits the High Court or the Court of Sessions to pass such order when exercising its power of revision.

7. In the result, therefore, the sentence of 3 months simple imprisonment is quashed and set aside. It is ordered that the accused shall pay an amount of Rs. 1,06,000/- to the respondent no. 1/complainant as compensation under Section 357 of the Code of Criminal Procedure. The sentence of fine of Rs. 5,000/- is, hereby, confirmed. The learned counsel for the applicant/accused undertakes to either deposit the amount of compensation in the trial Court or pay the same to the respondent no. 1/complainant within a period of 2 months from today. This statement is accepted as an undertaking on behalf of the

applicant/accused.

8. Criminal Revision Application is, accordingly, partly allowed on the aforesaid terms.

(P.V. HARDAS)
JUDGE.

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